

National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

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Hotel Employees, Local No. 84 (Crazy Horses, Inc.), Case 8-CP-330

133-8700, 260-3390, 260-6776

This case was submitted for advice on whether the Board would assert jurisdiction over a food concession operator located at a racetrack.

Facts

The Employer is a closely held corporation engaged in the operation of a restaurant and related food service concessions at a racetrack. The corporate vice president of the Employer, who is a major shareholder, is also the vice president and a major shareholder of the racetrack.

The Employer operates exclusively at the racetrack. The Employer's employees are subject to the state's rules on racing and must be licensed by the state Racing Commission. All the Employer's customers must enter through the racetrack's entrance and pay the racetrack's admission price. The Employer does cater private parties, but only at the racetrack and only at times when the racetrack is open to the public. Television monitors displaying the races and racing information are located throughout the Employer's dining facilities. Racetrack betting windows are located within the Employer's dining room, and customers are encouraged to place bets during their meals. Finally, the Employer and the racetrack engage in joint advertising and promotional campaigns.

ACTION

We concluded that the Board would assert jurisdiction over the Employer.

In *Hotel & Restaurant Employees, Etc., Local 343 (Herman Turner and Resort Concessions)*, ⁽¹⁾ the Board declined to assert jurisdiction over an employer whose business consisted solely of operating the food and beverage concessions at a racetrack. The employer and racetrack participated in joint promotional activities; the employer's customers had to pay admission to the track; and the employer and its employees were subject to "substantial" state regulation, i.e.:

that each employee be photographed, fingerprinted, and licensed; that weekly personnel reports be submitted by each employer listing its employees and their compensation, and that all personnel comply with the rules and regulations pertaining to the maintenance of proper decorum at the racetrack.

148 NLRB at 213. Thus, the employer's food services, "while not absolutely essential to the functioning of the racetrack, are an integral attribute of a facility such as a racetrack. . ." The services were expected by racetrack patrons, and the employer had a close identification with the racing industry. In this latter regard, the Board noted the degree of regulation exercised by the racetrack and the state racing commission "over aspects of the employment relationship relating to Resort's hire and retention of personnel. . . ." *Id.* at 214. Based on these factors, the employer's operations were found to be inextricably associated with those of the raceway.

However, the Board subsequently has not relied on *Resort Concessions*, *supra*, and has distinguished it in several cases. ⁽²⁾ Additionally, in *American Totalisator Co.*, 264 NLRB 1100 (1980), jurisdiction was asserted over an employer that manufactures and services equipment used in pari-mutuel betting at racetracks. ⁽³⁾ Thus, the Board apparently no longer views

such retail services as food concessions and betting facilities, which are still expected by racetrack patrons, to be "integral" attributes of a racetrack precluding assertion of jurisdiction over companies that provide such services. Moreover, substantial state regulation of an employer's labor relations does not necessarily preclude the Board from asserting jurisdiction.⁽⁴⁾

In view of all of the above, we asserted jurisdiction over a racetrack concessionaire in The Carat Co., Inc., Case 8-CA-21839, Advice Memorandum dated August 29, 1989. In that case, the employer operated the food services, program sales, parking services and payroll handling at a racetrack, and was substantially similar to the Employer here. In Carat Co., we noted that the Board had asserted jurisdiction over retail operations at racetracks in recent cases despite the presence of some of the factors present in Resort Concessions. However, in Carat Co., unlike here, the employer and the racetrack had no common corporate officers or shareholders. Moreover, the employer in Carat Co. was a subsidiary of a much larger corporation engaged in numerous other retail and wholesale operations outside the racetrack.

We conclude, however, that the differences between Carat Co. and the instant case would not warrant a contrary result. The Employer and the racetrack here clearly are separate legal entities. The mere fact that the two corporations share one officer/shareholder seems irrelevant. And the fact that the Employer is not owned by a larger corporation, which itself is within the Board's jurisdiction, also seems irrelevant. We therefore concluded that the Board also would assert jurisdiction over the Employer in this case.

H.J.D.

¹ 148 NLRB 208 (1964).

² See Waterford Park, Inc., 251 NLRB 874 (1980) (unlike Resort, no showing that labor dispute at motel facility would have substantial adverse impact on continued operation of racetrack, and no significant state regulation of motel employees); Ogden Food Service Corporation, 234 NLRB 303 (1978)(employer operated food service establishment at racetrack about 300 days per year, and operated both racetrack and nonracetrack facilities, whereas in Resort Concessions, "the employer's annual business barely met the Board's monetary standard for the assertion of jurisdiction.... Moreover, the operations of the racetrack were conducted exclusively at [one facility] and only during a 4-month racing season.").

³ Accord: United Tote, Inc., Case 20-CB-7969 (in July 3, 1989 authorization of Nash-Finch suit, Board asserted jurisdiction over company that contracted with a state authority to provide pari-mutuel wagering services for horse racing fairs in California; neither company nor its employees are licensed by state, nor are company's labor relations subject to state regulations although its contract with state authority requires company to comply with state horse racing board's rules, regulations and lawful orders.)

⁴ See, Volusia Jai Alai, Inc., 221 NLRB 1280 (1975), where the Board asserted jurisdiction over a Florida jai alai fronton despite extensive state regulation which included licensing requirements for all employees, and a procedure under which employees could appeal to the State any employer personnel decisions such as discharges and suspensions.